

REMARKS

Claims 1-13 are pending and stand rejected. Claims 1, 3, 4 and 13 have been amended. Claims 2 and 7-9 have been canceled.

Rejections Under 35 U.S.C. § 102:

Claims 1-4, 7, 10 -13 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,259,126 to Hsu et al. for the reasons stated on pages 2 and 3 of the Office Action.

It is respectfully submitted that amended claim 1 is not anticipated by Hsu.

On a fundamental level, the Office Action fails to establish a *prima facie* case of anticipation under 35 U.S.C. § 102(b). The Examiner asserts, without any explanation, on page 3 of the Office Action that claims 2-4 are anticipated by Hsu. In particular, the Examiner simply recites claims without pointing to specific support in Hsu to show where the claim elements are disclosed. Therefore, under these circumstances, Examiner has not met his initial burden of establishing a *prima facie* case of anticipation under 35 U.S.C. § 102(b), but has instead shifted the initial burden on Applicant to disprove anticipation, which is improper as a matter of law.

Notwithstanding the above, it is believed that Hsu does not disclose or suggest “a peripheral capacitor disposed in a peripheral circuit area, the peripheral capacitor including a lower capacitor electrode, a dielectric film, and an upper capacitor electrode”, as essentially recited in amended claim 1.

In contrast, Hsu discloses high voltage peripheral devices such as a charge-pump and boosted W/L driver. See, col. 5, lines 5-8.

Therefore, the Applicant respectfully submits that amended claim 1 is not anticipated by Hsu.

Claim 1 is patentable for additional reasons. Applicant respectfully submits that neither Hsu nor Tu, either singularly or in combination, teaches or suggests “an OTP ROM opening exposing the top surface of a lower electrode and a capacitor opening exposing the top surface of a lower capacitor electrode”, as essentially claimed in amended claim 1.

Examiner recognizes that “Hsu does not disclose the lower intermetal dielectric forming an opening and the upper electrode formed in the opening.” Further, Tu does not disclose that an OTP ROM opening exposes a top surface of a lower electrode. In contrast, an opening in Tu exposes a top surface of a stud layer (22a). See, Fig. 1.

Therefore, even assuming that Hsu and Tu were combined, the combination does not teach or suggest “an OTP ROM opening exposing the top surface of a lower electrode and a capacitor opening exposing the top surface of a lower capacitor electrode”, as essentially claimed in amended claim 1.

Claims 3-4 and 10-13 depend from claim 1 which, for the reasons stated hereinabove, is submitted not to be anticipated by the cited reference. Claim 7 has been canceled.

As for claim 3, since it is believed that Hsu does not disclose a peripheral capacitor including a lower capacitor electrode and an upper capacitor electrode as stated above, it follows that Hsu does not disclose “a lower electrode and an upper electrode being identical to a lower capacitor electrode and an upper capacitor electrode in material and thickness”, as essentially claimed in claim 3.

Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection of claims 1, 3-4 and 10-13 under 35 U.S.C. § 102(b) and that claims 1, 3-4 and 10-13 are in condition for allowance.

Rejections Under 35 U.S.C. § 103:

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hsu for the reasons stated on pages 4 and 5 of the Office Action.

Claim 5 depends from claim 1. This dependent claim is believed to be patentable over at least for the same reasons given for claim 1. Accordingly, withdrawal of the obviousness rejections is respectfully requested.

Claims 6, 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hsu in view of U.S. Patent No. 6,602,749 to Tu.

As discussed above, Hsu does not teach or suggest “an OTP ROM opening exposing the top surface of a lower electrode and a capacitor opening exposing the top surface of a lower capacitor electrode”, as essentially recited in claim 1.

Tu does not cure the deficiency of Hsu with regard. Accordingly, independent claim 1 is patentable over Hsu taken with Tu. Since claim 6 is dependent from claim 1, claim 6 is also patentable. Claims 8 and 9 are canceled.

Accordingly, withdrawal of the obviousness rejections is respectfully requested.

For the foregoing reasons, the present invention, including claims 1, 3-6, and 10-13, is believed to be in condition for allowance. The Examiner's early and favorable action is respectfully requested. The Examiner is invited to contact the undersigned if he has any questions or comments in this matter.

Respectfully submitted,



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